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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058956
Party	Defendant 578539 B.C. Ltd.
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Date	05/01/2014
Attachments	719L1.Answer.pdf(169352 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOCAL MAICO)	Cancellation No.	92058956
)	In re Registration No.:	4,156,487
Petitioner,)	Mark:	
v.)	Date Registered:	June 12, 2012
578539 B.C. Ltd.)		
)		
Respondent)		
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RESPONDENT'S ANSWER TO PETITION TO CANCEL

Attention: TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Answering the Petition to Cancel in the above captioned matter, the Respondent 578539 B.C. Ltd. ("Respondent") by and through its attorneys responds as follows:

Respondent denies the allegations of "deceptiveness".

Respondent denies the allegations of "false suggestion of a connection".

Respondent denies the allegations of "fraud".

Respondent denies the allegations of "genericness".

Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations that "For purposes of this correspondence, 'Maico' refers to the motorcycles made from 1926 to 1986 by Maicowerk A.G. of West Germany" in the first sentence of Paragraph 1 of the Petition to Cancel, and therefore denies such allegations.

Respondent is without knowledge or information sufficient to form a belief as to

the truth of the allegations that “During the 70’s and early 80’s, their off-road models were very popular, but the company ultimately failed due to poor management and increasing market pressure from Japanese manufacturers” in the second sentence of Paragraph 1 of the Petition to Cancel, and therefore denies such allegations.

Respondent denies the allegations that “‘Canadian Maico’ has registered the ‘Maico’ mark and has stolen the goodwill and reputation established by the original Maico, a German motorcycle manufacturer” in the first sentence of Paragraph 2 of the Petition to Cancel.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations that “The original Maico brand, which was established by a German company, ‘Maico’, no longer exists, but its parts are quite valuable and readily available through many resellers” in the second sentence of Paragraph 2 of the Petition to Cancel, and therefore denies such allegations.

Respondent admits the allegation that “The Maico brand is well known” in the third sentence of Paragraph 2 of the Petition to Cancel, but denies the remainder of the allegations in the third sentence of Paragraph 2 of the Petition to Cancel.

Respondent denies the allegations that “‘Canadian Maico’ is deceiving the public and falsely suggesting a connection to the original Maico, which was well known for producing motorcycle parts” in the first sentence of Paragraph 3 of the Petition to Cancel.

Respondent denies the allegations that “This trademark isn’t being used to protect the Maico brand as intended by a trademark” in the first sentence of Paragraph 4 of the Petition to Cancel.

Respondent denies the allegations that “Mr. Caldwell is using his recent registration of the Maico logo to attempt to extort licensing and royalty fees from me and I’m aware of several other competitors complaining of the same tactics being used against them.” in the first sentence of Paragraph 5 of the Petition to Cancel.

Respondent denies the allegations that “Mr. Caldwell has deceived the public and the USPTO as to his real intent of this registration of trademark” in the first sentence of Paragraph 6 of the Petition to Cancel.

Respondent denies the allegations that “[the Respondent’s] intent is to use this trademark to stifle competition in the market place” in the second sentence of Paragraph 6 of the Petition to Cancel.

Respondent denies the allegations that “[the Petitioner’s] company has been using this logo in trade since 2009” in the first sentence of Paragraph 7 of the Petition to Cancel.

Respondent admits the allegation that U.S. Trademark Registration No. 4,156,487 was granted to the Respondent on June 12, 2012 in the second sentence of Paragraph 7 of the Petition to Cancel, but denies the remainder of the allegations in the second sentence of Paragraph 7 of the Petition to Cancel.

Respondent denies the allegations that “Before 2012, this logo has been freely and widely used without any defense from the previous owner” in the third sentence of Paragraph 7 of the Petition to Cancel.

Respondent denies the allegations that “It has been considered in the public domain for well over 10 years before it was considered abandoned and then registered by Mr. Caldwell” in the fourth sentence of Paragraph 7 of the Petition to Cancel.

GENERAL DENIAL

Except as expressly admitted herein, Respondent denies each and every allegation contained in the Petition to Cancel, and denies that Petitioner is entitled to any relief requested, and therefore demands strict proof thereof.

AFFIRMATIVE DEFENSES

1. The Petition to Cancel fails to state a claim upon which relief can be granted.
2. Respondent first used the mark identified in Registration No. 4,156,487 from a time prior to Petitioner's claimed first use.
3. Unclean hands.
4. Laches.
5. Estoppel.
6. Acquiescence.
7. Waiver.

WHEREFORE, Respondent seeks that Petitioner SOCAL MAICO's Petition to Cancel be dismissed, with prejudice.

Dated: May 1, 2014

Respectfully submitted,
IPROPERTY, INC.

By:

/Gina M. Lupino/
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CERTIFICATE OF SERVICE

On May 1, 2014, I filed the Respondent's ANSWER TO PETITION TO CANCEL electronically and caused a true and correct copy of the same to be served on the Petitioner at the following address via overnight mail by causing delivery of a true and correct copy of the same to an overnight courier, pursuant to 37 CFR § 2.119(b)(5) and § 2.119(c):

SoCal Maico
c/o J GARY KORTZ
SOCAL MAICO
2790 SHERWIN AVENUE, SUITE 13
VENTURA, CA 93003
USA

Dated: May 1, 2014

/Gina M. Lupino/
Gina M. Lupino